

Before the
Federal Communications Commission
 Washington, DC 20554

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In the Matter of)
 Federal-State Joint Board on)
 Universal Service)

CC Docket No. 96-45

**Reply Comments of the
 Colorado Library, Education, & Healthcare Telecommunications Coalition
 (Colorado LEHTC)
 to the Recommended Decision**

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Introduction and Executive Summary

The Colorado Library, Education and Healthcare Telecommunications Coalition (Colorado LEHTC) welcomes the opportunity to reply to comments on the Federal-State Joint Board's November 7, 1996 recommendations submitted to the Federal Communications Commission (FCC) December 19, 1996. Colorado LEHTC is comprised of 44 libraries, elementary and secondary schools, health care providers and related associations interested in the advanced services discount provisions enacted as part of Section 254 of the Telecommunications Act of 1996. The following summarizes our response to the comments filed.

On the following Definitional Issues, Colorado LEHTC

- Concurs with Clarifying Library Definition
- Concurs with Inclusion of Telecommunications Components of Internet Service
- Concurs with Concerns Regarding "Lowest Corresponding Price" in Non-Competitive Areas

On the following Discount Process Issues, Colorado LEHTC

- Recommends that Telecommunications Providers Should Be Required to Respond to a Request for Proposal
- Recommends that All Rural Areas are Defined as High Cost Areas in a Discount Matrix
- Concurs with a Separate Matrix for Libraries Using Library Service Areas with Populations of 185% of Poverty and High Cost Areas as Defined Above

On the following General Administrative Process Issues, Colorado LEHTC

- Recommends Offering States the Option of Administering the Universal Service Discounts
- Concurs with Better Representation of Non-LECs in Universal Service Support Mechanism Administration
- Rejects Per-Institution Cap
- Rejects Combining Funds for Libraries, Schools and Rural Health Care Providers

Reply to December 19, 1996 Comments

II.A. Definitional Issues

II.A.1 Concur with Clarifying Library Definition

We support the comments of the American Library Association that explain the problems associated with using the Library Services and Construction Act definition for eligible libraries. We support using the Library Services and Technology Act (included in Public Law 104-208) as the proper definition for libraries and library consortia.

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In addition, Footnote 1866 in the Joint Board Recommendations incorrectly cites the Library Services and Construction Act definition. The definition in Footnote 1866 is from **Title I** of LSCA, rather than **Title III** as required by law (47 U.S.C. 254(h)(4)). The Title III definition is of eligible recipients of funds (LSCA, Title III, Sec. 302 (a)) is included in a description of what grants may be used for:

Such grants shall be used (1) for planning for, and taking over steps leading to the development of, cooperative library networks; (2) for establishing, expanding, and operating local, regional and interstate cooperative networks of libraries, which provide for the systematic and effective coordination of the resources of **school, public, academic, and special libraries and information centers** for improved supplementary services for the special clientele served by each type of library or center; and (3) developing the technological capacity of libraries for interlibrary cooperation and resource sharing.

Thus, under LSCA Title III, academic and special libraries were eligible for grants only to the extent they participated in a cooperative network to coordinate the sharing of their resources. State library agencies were prohibited from making grants that only supported the students in an academic setting. However, as described in the comments submitted by the American Library Association, the Library Services and Construction Act has been replaced by the Library Services and Technology Act which includes a new definition of eligible libraries. The Library Services and Technology Act also places a high priority on networking and resource sharing among libraries.

Although part of higher education institutions, academic libraries will have no difficulty in separating their costs of telecommunication from that of the higher education institution of which they are a part. The Joint Board has recommended that all consortia and networks separate their cost by line or usage so that only eligible entities receive the discount. This disaggregation of costs will assure appropriate use within an academic setting.

II.A.2 Concur with Inclusion of Telecommunications Components of Internet Service

We strongly support the Joint Board's Recommendation on including the telecommunications components of Internet access (Para. 462-465) as well as comments supporting this provision. The Internet is becoming an integral part of business and educational activities in this country and should be readily available to all citizens to maintain educational parity. We believe the Joint Board has addressed some commenters concerns about the scope of Internet services available for the discount by limiting the discount to the basic conduit and electronic mail. While we are eager to access content as well, we believe the Joint Board has made a prudent distinction between these components. Libraries, schools and rural health care providers (if offered this service as well) may evaluate Internet content when reviewing Internet Service Provider (ISP) bids and choose to use other funds for these additional benefits, especially if the ISP offers content beneficial to the library, school, community or rural health care provider's needs.

II.A.3 Concur with Concerns Regarding "Lowest Corresponding Price" in Non-Competitive Areas

We concur with commenters, such as MCI, concerned about the Joint Board's recommendation that the FCC use the "Lowest Corresponding Price" in areas where there is no competition. (Joint Board Decision Para. 540 & 541) In areas without competition, this price can be prohibitively high even with a modest discount. This is particularly true in these areas since often they are least able to afford advanced or special telecommunications services. We recommend that the FCC consider establishing a High Cost Adjustment for these areas so that the discount, established in the discount

establishing a High Cost Adjustment for these areas so that the discount, established in the discount matrix will be a meaningful one. One way of setting a High Cost Adjustment might be to survey the libraries and schools in areas where there is competition. For example, in Colorado that would include libraries and schools along the Front Range from Fort Collins to Pueblo to establish a base price. The discount afforded to the libraries and schools would be applied to that base price.

II.B Discount Process Issues

II.B.1 Telecommunications Providers Should Be Required to Respond to a Request for Proposal

The Joint Board recommended that the libraries and schools submit requests to the fund administrator for posting (Joint Board Recommendation, Paragraphs 602-604 & 628-630). However, we are concerned that, as presented in the Joint Board's proposal, this does not require a telecommunications provider to respond to the request which renders the entire discount opportunity moot. While libraries and schools located in urban areas of a state may be attractive for responding to a request, there are many rural areas of our state where there is currently one telecommunications provider and that provider may not choose to extend their services to offer advanced services to libraries, schools and rural health care providers.

We strongly urge that the eligible library, school or rural health care provider present its bona fide request directly to the telecommunications providers of its choice and file a copy of the requests with the State fund administrator. In addition, we believe that a telecommunications provider serving the area in which the library, school or rural health care provider is located should be required to respond to the bona fide request and other telecommunications providers should be allowed to respond within 20 days. First, this would assure that the library, school or rural health care provider may avail itself of the discount provision and offer the eligible entity an opportunity to get the discount process underway. Second, by requiring the eligible entity to submit requests to more than one entity, this promotes the competition that the Joint Board and, presumably, the FCC are attempting to promote to potentially reduce prices.

II.B.2 Recommend All Rural Areas are Defined as High Cost Areas in a Discount Matrix

In determining high cost areas, we support the Joint Board's position that affordability contains two factors - price and ability to pay rates (Joint Board Recommendation, Paragraphs 557-560). However, there may be areas, like Colorado, where the school funding formula accounts for discrepancies in funding capabilities among school districts. In these instances, other issues, such as the price of reaching rural areas, become more important factors in determining affordability because the state funding formula mitigates the differences between richer and poorer districts, but cannot mitigate the distance and rurality factors associated with telecommunications costs throughout the state. We recommend that the FCC consider all rural areas, as defined by the Department of Health and Human Services' Office of Rural Health Policy including the Goldsmith Modification, to be high cost areas for the purposes of the discount matrix. These areas are, by definition, the hardest to reach and suffer the difficulties of distance and rurality factors.

II.B.3 Concur with a Separate Matrix for Libraries Using Library Service Areas with Populations of 185% of Poverty and High Cost Areas as Defined Above

Related to the above issue, we believe that the discount matrix presented in the Joint Board Recommendation may be appropriate for schools, but will be difficult for libraries to implement due to overlapping jurisdictions (Joint Board Recommendation, Paragraph 555). We recommend that the

in the American Library Association (ALA) Reply Comments, that is not tied to the National School Lunch Program (NSLP) population. Libraries serve a broader population than school-age children and this population may not be captured through the NSLP process. However, unlike the ALA graph, we believe that the NSLP 185% of poverty threshold is appropriate for establishing the discounts for libraries. By utilizing the NSLP threshold, determination of need will be similar between libraries and schools. This may mean that some schools may qualify for greater discounts in some areas and libraries may qualify for greater discounts in other areas, but it will be because the determination is based on the needs of the population served.

Use of census tracts is also appropriate. The service boundaries and population of each public library is already established by other state and federal agencies. The National Center for Education Statistics (a federal agency) formed the Federal State Cooperative System for Public Library Data to standardize statistics collected from all public libraries in the country. In the definitions used in this data collection effort it states:

The determination of this population figure shall be the responsibility of the state library agency. This population figure should be based on the most recent official state population figures for jurisdictions in your state available from the State Data Center.

Data on all public libraries in the country has now been collected since 1989 years and is available at the National Center for Educational Statistics Web site at <http://www.ed.gov/nces/surveys/public.html>.

II.C General Administrative Process Issues

II.C.1 Recommend Offering States the Option of Administering the Universal Service Discounts

As we and some other commenters, such as the State of Vermont, have mentioned, we believe that the most administratively appropriate process for implementing discounts for schools, libraries and rural health care providers would be to utilize state mechanisms. From a library, school or rural health care provider's perspective, simple means working through one process. While not every state has a universal service fund process or a discount mechanism for libraries, schools and rural health care providers at this time, allowing a state commission to piggyback their own discount mechanisms would provide a simpler procedure for all involved. Because not every state is currently capable of implementing these programs, we recommend that the FCC allow states to administer the universal service program by requesting this role. We envision that, similar to the self-funded administrative process currently established by the FCC for universal service, that administrative funding should be provided to the states choosing to administer the program. Appropriate oversight and accounting procedures should be adopted to assure that administrative funding does not exceed its necessary level. The Colorado High Cost Fund currently incorporates procedures to assure prudent management of that fund and we encourage the FCC to implement similar rules for state administration. (Colorado Rule 4 CCR 723-41-10 & 11)

Related to this, the Joint Board did not identify any mechanism for resolving disputes among parties during the negotiations between the telecommunications provider and the eligible entity. Again, we believe this is an important function that should be included in the rules established by the FCC and that it should be carried out by the state commission due to the reasons mentioned above.

II.C.2 Concur with Better Representation of Non-LECs in Universal Service Support Mechanism Administration

We strongly support the comments of the American Library Association that suggest broader representation of interests in administering the universal service support mechanism. If the FCC chooses to continue to use NECA to administer the universal service fund, we agree that NECA should be required to broaden its governing body to represent consumers, libraries, schools, rural health care providers and non-LEC carriers. NECA was an obvious and appropriate choice for the former Universal Service Fund. However, given the new fund's broader mandate and broader number of participants, the new fund administrator should represent those interests as well. As mentioned above, we believe state commissions have an important role to play in administration and believe they should be represented as well to assure state administrative issues are understood and addressed.

II.C.3 Reject Per-Institution Cap

AT&T Corporation has recommended that the FCC institute not only a cap on the universal service fund for libraries and schools, but one on each eligible institution. We strongly disagree with this proposal and urge the FCC to reject it. Because each eligible entity has unique needs, it is impossible to know from year to year what financial obligations will be required to meet the needs of the community it serves. Particularly in rural areas where advanced telecommunications services are extremely expensive and, in some cases, non-existent, it would be unfair to limit the discount support. These institutions have the greatest need to participate in the technological revolution currently taking place and have been least able to take advantage of it. Capping the amount each entity may utilize from the fund is arbitrary.

Perhaps AT&T Corporation has suggested this proposal because they are concerned about arbitrary purchases by eligible entities. We submit that the fact that the Joint Board has recommended every participant contribute some funds toward their telecommunications service purchases addresses the concern that eligible entities will overspend. Libraries, schools and rural health care providers do not have unlimited funds at their disposal. Libraries and schools have very constrained budgets that are publicly analyzed because those funds are provided by primarily state and local governments. Rural health care providers eligible for discounts are typically operated on limited budgets as well since most of their funding is provided through Federal, State and local grants, as well as donations. Frivolous purchases are not a luxury any of these groups can afford.

II.C.4 Reject Combining Funds for Libraries, Schools and Rural Health Care Providers

Frontier Corporation has recommended combining the funding mechanisms for libraries, schools and rural health care providers and decreasing the size of the fund. We disagree with this recommendation. First, numerous studies, such as the McKinsey Report, the Kickstart Report, and the National Library Information Services survey, have shown the potential costs associated with the needs of libraries and schools. While these studies are broad brushstrokes, they give the FCC some sense of where this program should be headed. The studies for rural health care providers are still being collected. Second, the standards used for libraries and schools are different from those used by rural health care providers. For example, libraries and schools may not receive a discount for instruction related to telecommunication services. Also, libraries and schools must be offered "affordable" rates while rural health care providers must be offered "comparable" rates. (47 USC 254(h)(1)(B) versus 254(h)(1)(A)) These are significant differences that support separate funds for these groups of eligible entities.

We thank you for this opportunity to reply to comments in these proceedings.

Nancy Bolt, Deputy State Librarian
on behalf of the Colorado Library, Education, and Healthcare Telecommunications Coalition